

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 855 of 1995

WITH

FIRST APPEAL No 856 of 1995

AND

FIRST APPEAL No 857 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER

Versus

KASHIBEN MALABHAI PARMAR

Appearance:

Harsha Devani, AGP for Petitioner
G.A.Amin for the Respondent.

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 24/03/98

ORAL JUDGEMENT (Per Y.B.Bhatt, J)

Appeals admitted. Mr.G.A.Amin waives service on behalf of the respondents.

2. On the joint request of the learned counsel for the respective parties these appeals are taken up for final hearing today.

3. These appeals have been filed by the appellant State under Section 54 of the Land Acquisition Act read with Section 96 Civil Procedure Code, wherein the appellant challenges the common judgement and awards passed by the Reference Court under Section 18 of the said Act.

4. The learned Counsel for the appellant has urged only one point and that is to the effect that the market value determined by the Reference Court is excessive and thus requires to be reduced.

5. On perusal of the judgement and record it becomes obvious that no intrinsic and/or basic evidence as to market value of the acquired lands has been led either by the claimant or by the state. The Reference Court has accepted the plea and suggestion of the claimants that the market value of the acquired lands be determined in accordance with the market value already determined by the judgement and award in a earlier land reference Case No.421 of 1990 which is at Exh.15. Although the section 4 notification in Exh.15 was 20.2.1986, whereas in the present acquisition it is 26th October, 1989, the claimants were prepared to accept the same rate. This plea and submission of the claimants before the Reference Court was not contested by the District Government Pleader and thus the Reference Court accordingly determined the market value of the acquired lands in the absence of any controversy whatsoever. Thus market value determined by the reference court was Rs.13.05 ps per sq.mtr. i.e. to say Rs.1305 per are.

6. However, the contention now sought to be raised in appeal is that the award in land reference case no.421 of 1990 (Exh.15) which has been made a basis of the present and impugned award, was not really comparable, and therefore would not offer a reliable instance for determining the market value of the acquired lands. Obviously this contention could have been taken before the reference court but infact was not done. Nevertheless, since we are examining the appeal, we ought not to shut out such a contention. Under normal

circumstances, we would have been inclined to remand the matter so as to enable both the sides to lead better and proper evidence, on the basis of which the lower court could decide the appropriate market value. However, our attention has been drawn to a decision of the Supreme Court in the case of K Krishna Reddy reported in AIR 1988 Supreme Court Pg.2123. In the said decision, the Supreme Court has emphasised the need to avoid orders of remand by the High Court as far as possible, particularly in land acquisition cases. Para 11 and 12 of the said decision emphasise this aspect.

7. In view of the said decision, we inquired of the learned counsel for the respective parties as to what would be their suggestion as regards the appropriate market value of the acquired land. Learned Counsel for the appellant State was not in any position to name a figure even by way of a suggestion. On the other hand, learned counsel for the respondent claimants did offer a few suggestions, ultimately the last suggestion being a market value of Rs.600/- to Rs.700/- per are, while making it clear that this was merely a suggestion on his part and that the figure may ultimately be determined by the court.

8. Since we have been placed in a position of having to determine the market value of the acquired lands not on the basis of any evidence or material or record, but merely on the grounds of expediency, that the claimants should be placed in funds as soon as possible without avoidable expenditure of time which would be involved in a retrial by way of reference court and further appeal etc, we must necessarily resort to a process of estimation which may perhaps go slightly beyond the normal parameters usually acceptable to the appellate court. Bearing all these factors in mind and in view of the peculiar facts and circumstances of the case, without any intention of creating any precedent whatsoever, we determine the market value of the acquired lands at Rs.650/- per are. Thus the impugned judgement and award shall stand modified only to the extent of the refixation of the market value indicated by us hereinabove, and shall stand confirmed so far as the rest of the 3 awards is concerned.

9. These appeals therefore partly succeed and are accordingly partly allowed with no orders as to costs. Decree accordingly. The appellant shall deposit the requisite amount due to the claimants under the present decree within a period of 4 months from today before the Reference Court.

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